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**FIBA Arbitral Tribunal (FAT)**

**ARBITRAL AWARD**

**(0036/09 FAT)**

rendered by

**FIBA ARBITRAL TRIBUNAL (FAT)**

**Mr. Stephan Netzle**

in the arbitration proceedings

**Mr. Tigran Petrosean, TP Sports, Vitebsky Prospekt 79/3-37, 196233 St. Petersburg, Russia**

**- Claimant -**

vs.

**Women Basketball Club "SPARTAK" St. Petersburg, 66 Maliy Prospekt, 199406 St. Petersburg, Russia**

**- Respondent -**



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## **FIBA Arbitral Tribunal (FAT)**

### **1. The Parties**

#### **1.1 The Claimant**

1. Mr Tigran Petrosean (hereinafter "Mr. Petrosean" or "Claimant") is a licensed FIBA agent registered with FIBA under the FIBA agent license No. 2007019165. He operates his business under the name of TP Sports. Claimant is domiciled at Vitebsky Prospekt 79/3-37, 196233 St. Petersburg, Russia.

#### **1.1. The Respondent**

2. Women Basketball Club "SPARTAK" St. Petersburg (hereinafter "Spartak" or the "Respondent") is a professional basketball club with its seat in St. Petersburg, Russia. It is domiciled at 66 Maliy Prospekt, 199406 St. Petersburg, Russia. Respondent is not represented by counsel.

### **2. The Arbitrator**

3. On 20 March 2009, the President of the FIBA Arbitral Tribunal (the "FAT") appointed Dr. Stephan Netzle as arbitrator (hereinafter the "Arbitrator") pursuant to Article 8.1 of the Rules of the FIBA Arbitral Tribunal (hereinafter the "FAT Rules").
4. On 20 March 2009, the Arbitrator accepted his appointment and signed a declaration of acceptance and independence.



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5. None of the Parties has raised objections to the appointment of the Arbitrator or to the declaration of independence rendered by him.

### 3. Facts and Proceedings

#### 3.1. Background Facts

6. On 8 April 2008, the Parties entered into a Standard Agency Contract according to which Claimant was appointed to represent Respondent in connection with the engagement of basketball players. In turn, Respondent undertook to compensate Claimant with an Agent Fee for each player engaged.
7. On 9 April 2008, Addendum No. 1 to the Standard Agency Contract was signed. According to Addendum No. 1, Respondent agreed to pay RUB 250,000 to Claimant for the services rendered in connection with the player **Natalia Zhedik**. This amount was to be paid by no later than 1 December 2008.
8. Also on 9 April 2008, the Parties signed Addendum No. 2 to the Standard Agency Contract. According to Addendum No. 2, Respondent agreed to pay RUB 200,000 to Claimant for the services rendered in connection with the player **Ekaterina Burko**. Payment was to be made until 1 December 2008.
9. On 28 May 2008, the Parties signed Addendum No. 3 to the Standard Agency Contract. According to Addendum No. 3, Respondent agreed to pay RUB 370,000 to Claimant for the services rendered in connection with the player **Svetlana Makhlina**.



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This amount was to be paid in two installments, namely RUB 185,000 by no later than 15 June 2008 and the balance of RUB 185,000 by no later than 1 December 2008.

10. On 6 April 2009, Respondent paid the Agent Fees related to the players Natalia Zhedik and Ekaterina Burko. However, to date, Respondent has not paid the Agent Fee related to Svetlana Makhlina.

### 3.2. The Proceedings before the FAT

11. On 10 March 2009, Claimant filed a Request for Arbitration in accordance with the FAT Rules.
12. By letter dated 26 March 2009, the FAT Secretariat confirmed receipt of the Request for Arbitration as well as the non-reimbursable handling fee and informed the Parties of the appointment of the Arbitrator. In the same letter, a time limit was fixed for Respondent to file its Answer to the Request for Arbitration until 16 April 2009 (the "Answer"). The letter also requested the Parties to pay the following amounts as an Advance on Costs by no later than 9 April 2009:

<i>"Claimant (TP Sports):</i>	<i>EUR 4,000</i>
<i>Respondent (WBC St. Petersburg):</i>	<i>EUR 4,000"</i>

13. By letter dated 8 April 2009, Claimant confirmed payment of its share of the Advance on Costs (EUR 4,000). It also informed the FAT Secretariat that on 6 April 2009, it had received two payments from Respondent, namely
  - 250,000 RUB for the services rendered regarding the player N. Zhedik (Addendum No. 1 to the Standard Agency Contract);



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- 200,000 RUB for the services rendered in connection with the player E. Burko (Addendum No. 2 to the Standard Agency Contract).
14. By letter to the Parties dated 16 April 2009, the FAT Secretariat acknowledged receipt of Claimant's letter dated 8 April 2009 and Claimant's share of the Advance on Costs. The time limits for Respondent to file its Answer and to pay its share of the Advance on Costs were extended until 23 April 2009.
  15. By letter dated 27 April 2009, the FAT Secretariat informed the Parties that Respondent had failed to submit its Answer and to pay the Advance on Costs. In accordance with Article 9.3 of the FAT Rules, Claimant was invited to substitute for the missing payment of the Respondent until 11 May 2009. Claimant paid Respondent's share of the Advance on Costs on 14 May 2009.
  16. On 12 May 2009 Respondent submitted a copy of a letter to Claimant by which it stated its position regarding the Agent Fees (see also par. 24 hereunder). By letter to the Parties dated 27 May 2009, the FAT Secretariat confirmed receipt of Claimant's payment to cover the Respondent's share of the Advance on Costs. The Arbitrator declared the exchange of documents completed and invited the Parties to submit a detailed account of their costs by no later than 5 June 2009.
  17. By letter dated 28 May 2009, Claimant submitted the following account of costs:

<i>Non-reimbursable fee</i>	<i>3,000 EUR + 40 EUR bank transfer commission</i>
<i>Advance on Costs (Claimant's share)</i>	<i>4,000 EUR + 65 EUR bank transfer commission</i>
<i>Advance on Costs (Respondent's</i>	<i>4,000 EUR + 65 EUR bank transfer commission</i>



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<i>share)</i>	
<i>Legal services costs</i>	<i>200,000 RUB</i>
<b><i>TOTAL COSTS:</i></b>	<b><i>11,170 EUR and 200,000 RUB</i></b>

18. The Parties did not request the FAT to hold a hearing. The Arbitrator therefore decided in accordance with Article 13.1 of the FAT Rules not to hold a hearing.

### 4. The Parties' Submissions

#### 4.1. The Claimant's Submissions

19. Claimant submits that the Parties signed a Standard Agency Contract including three Addenda by which Claimant undertook to provide “*services [...] in connection with*” the female basketball players Natalia Zhedik, Ekaterina Burko and Svetlana Makhlina.
20. Claimant also submits that the Agent Fees for the services rendered in connection with these players had not been paid. In addition, the Respondent had also failed to pay the contractually agreed service charge of RUB 3,000 per day if the payment of the Agent Fee was late.
21. In his letter dated 8 April 2009, Claimant informed the FAT that Respondent had paid the Agent Fees regarding the players Natalia Zhedik and Ekaterina Burko. However, Respondent had still not paid the Agent Fee related to the player Svetlana Makhlina in



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accordance with Addendum No. 3, nor the “service charges” due for late payment of the Agent Fees with respect to all three players.

### 4.2. Claimant’s Request for Relief

22. In his Request for Arbitration, Claimant had requested payment of the Agent Fees concerning the three players Natalia Zhedik, Ekaterina Burko and Svetlana Makhlina plus “service charges” for late or non-payment of the Agent Fees. After Respondent paid the amounts corresponding to the Agent Fees for the players Natalia Zhedik and Ekaterina Burko, Claimant amended his Request for Relief as follows:

- “1. ***The stipulated penalty in the amount of 360 000 (Three hundred sixty thousand) RUR for 120 days delay in payment (3 000 RUR per day from December 8, 2008 until April 6, 2009) regarding player N. Zhedik in accordance with clause 3 of the Addendum #1 to the agency contract;***
2. ***The stipulated penalty in the amount of 360 000 (Three hundred sixty thousand) RUR for 120 days delay in payment (3 000 RUR per day from December 8, 2008 until April 6, 2009) regarding player E.Burko in accordance with clause 3 of the Addendum #2 to the agency contract;***
3. ***The payment of 370 000 (Three hundred seventy thousand) RUR for the rendered services regarding player S.Makhlina, in accordance with the Addendum #3 to the agency contract;***
4. ***The stipulated penalty in the amount of 1 194 000 (One million one hundred ninety four thousand) RUR for 283 days delay in the first payment (3 000 RUR per day from June 23, 2008 until April 1, 2009) and 115 days delay in the second payment (3 000 RUR per day from December 8, 2008 until April 1, 2009) regarding player S.Makhlina in accordance with clause 3 of the Addendum #3 to the agency contract, likewise in accordance with the sent invoice (in pursuance of the fax received on April 1, 2009).***
5. ***The stipulated penalty for the delay in each of two (2) principal payments in the amount calculated at the rate of 3 000 RUR per day (per payment) from April 1, 2009 until the date when the Club fully pays the due amount, regarding player***



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*S.Makhlina in accordance with the clause of the **Addendum #3** to the agency contract;*

6. *The costs of legal services in the amount of 200 000 (Two hundred thousand) RUR;*
7. *Full Arbitrage expenses including non-reimbursable fee of 3 000 EUR.”*

#### **4.3. Respondent's Submission**

23. Respondent has not submitted an Answer within the time limit which was extended until 23 April 2009.
24. The FAT Secretariat has however received a copy of Respondent's letter to Claimant dated 12 May 2009 by which Respondent made the following statements:

*“Dear Tigran!*

*Let you know that the debt of Women Basketball Club “Spartak” to Sport Agency “TP Sports” which rendered for attracting of players Burko and Zhedik is already paid off.*

*The opportunity of paying fine sanctions we can discuss in any time and place you want.*

*Also I inform you that there are no any facts confirming your participation in conclusion the contract with player Makhlina.*

*In consequence of these facts I ask you to produce any arguments confirming the fact of rendering agent services to Women Basketball Club “Spartak” in part of attracting player Makhlina and your participation in concluding and signing valid contract corresponding to Russian Federation Basketball rules.*

*Director Kryukov Andrey”*



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### 4.4. Respondent's Request for Relief

25. Respondent did not submit a formal Request for Relief.

## 5. Jurisdiction and other Procedural Issues

26. Pursuant to Article 2.1 of the FAT Rules, "[t]he seat of the FAT and of each arbitral proceeding before the Arbitrator shall be Geneva, Switzerland". Hence, this FAT arbitration is governed by Chapter 12 of the Swiss Act on Private International Law (PILA).

### 5.1. The jurisdiction of FAT

#### 5.1.1 Review *ex officio*

27. As a preliminary matter, the Arbitrator wishes to emphasize that, since the Respondent did not participate in the arbitration, he will examine his jurisdiction *ex officio* on the basis of the record as it stands.<sup>1</sup>
28. The jurisdiction of the FAT presupposes the arbitrability of the dispute and the existence of a valid arbitration agreement between the parties.

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<sup>1</sup> ATF 120 II 155, 162.



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### **5.1.2 Arbitrability**

29. The Arbitrator notes that the dispute referred to him is clearly of a financial nature and is thus arbitrable within the meaning of Article 177(1) PILA.<sup>2</sup>

### **5.1.3 Formal and substantive validity of the arbitration agreement**

30. The existence of a valid arbitration agreement will be examined in light of Article 178 PILA, which reads as follows:

*"1 The arbitration agreement must be made in writing, by telegram, telex, telecopier or any other means of communication which permits it to be evidenced by a text.*

*2 Furthermore, an arbitration agreement is valid if it conforms either to the law chosen by the parties, or to the law governing the subject-matter of the dispute, in particular the main contract, or to Swiss law"*

31. The jurisdiction of the FAT over the dispute between Claimant and Respondent results from Clause 6 of the Standard Agency Contract and Clause 6 of Addendum No. 1, 2 and 3 respectively, which read as follows:

***"6. Arbitration***

*Any dispute arising from or related to the present contract shall be submitted to the FIBA Arbitral Tribunal (FAT) in Geneva, Switzerland and shall be resolved definitely in accordance with the FAT Arbitration Rules. Awards of the FAT can be appealed to the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland."*

32. The Standard Agency Contract and the Addenda are in written form and thus, the arbitration agreement fulfills the formal requirements of Article 178(1) PILA.

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<sup>2</sup> Decision of the Federal Tribunal 4P.230/2000 of 7 February 2001 reported in ASA Bulletin 2001, p. 523.



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33. With respect to substantive validity, the Arbitrator considers that there is no indication which could cast doubt on the validity of the arbitration agreement under Swiss law (cf. Article 178(2) PILA). In particular, the wording “[a]ny dispute arising from or related to the present contract” clearly covers the present dispute.<sup>3</sup>

### 5.2. Other Procedural Issues

34. Article 14.2 of the FAT Rules which the Parties have declared to be applicable in the arbitration agreement, specifies that: *“the Arbitrator may nevertheless proceed with the arbitration and deliver an award” if the Respondent fails to submit an Answer*”. The Arbitrator’s authority to proceed with the arbitration in the case of default of one of the parties is in accordance with Swiss arbitration law<sup>4</sup> and the practice of FAT.<sup>5</sup> However, the Arbitrator must make every effort to enable the defaulting party to assert its rights. This requirement is met in the current case. Respondent was informed of the initiation of the proceedings and of the appointment of the Arbitrator, in line with the relevant rules. It was also given ample opportunity to respond to Claimant's submissions. In light of these circumstances, the Arbitrator considers himself fit to proceed with the arbitration and deliver the award.

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<sup>3</sup> See for instance BERGER/KELLERHALS, *Internationale und Interne Schiedsgerichtsbarkeit in der Schweiz*, Bern 2006, No. 466, pp. 160-161.

<sup>4</sup> Swiss Federal Tribunal SJ 1982, 613, 621; see also KAUFMANN-KOHLER/RIGOZZI, *Arbitrage international*, Bern 2006, No. 483; LALIVE/POUDRET/REYMOND, *Le Droit de l'arbitrage interne et international en Suisse*, Lausanne, 1989, No.8 ad Art, 182 PIL; RIGOZZI, *L'Arbitrage international en matière de Sport*, Basle 2005, No. 898; SCHNEIDER, *Basel Kommentar*, No. 87 ad Art. 182 PILA.

<sup>5</sup> See for instance FAT Decision 0001/07 (*Ostojic, Raznatovic vs. PAOK*); FAT Decision 0018/08 (*Nicevic vs. Besiktas JK*).



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### 6. Discussion

#### 6.1. Applicable Law – *ex aequo et bono*

35. With respect to the law governing the merits of the dispute, Article 187(1) PILA provides that the arbitral tribunal must decide the case according to the rules of law chosen by the parties or, in the absence of a choice, according to the rules of law with which the case has the closest connection. Article 187(2) PILA adds that the parties may authorize the arbitrators to decide “*en équité*”, as opposed to a decision according to the rule of law referred to in Article 187(1). Article 187(2) PILA is generally translated into English as follows:

*“the parties may authorize the arbitral tribunal to decide ex aequo et bono”.*

36. Under the heading “Applicable Law”, Article 15.1 of the FAT Rules reads as follows:

*“Unless the parties have agreed otherwise the Arbitrator shall decide the dispute ex aequo et bono, applying general considerations of justice and fairness without reference to any particular national or international law.”*

37. In the present case the Parties have not agreed otherwise. Consequently, the Arbitrator shall adjudicate the claims *ex aequo et bono*.<sup>6</sup>

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<sup>6</sup> See FAT Decision 0005/08 (Pavic vs. AEK).



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### 6.1.1 The statutory concept of *ex aequo et bono* arbitration

38. The concept of *équité* (or *ex aequo et bono*) used in Article 187(2) PILA originates from Article 31(3) of the *Concordat intercantonal sur l'arbitrage*<sup>7</sup> (Concordat),<sup>8</sup> under which Swiss courts have held that arbitration *en équité* is fundamentally different from arbitration *en droit* :

*“When deciding ex aequo et bono, the arbitrators pursue a conception of justice which is not inspired by the rules of law which are in force and which might even be contrary to those rules.”*<sup>9</sup>

39. In substance, it is generally considered that the arbitrator deciding *ex aequo et bono* receives “a mandate to give a decision based exclusively on equity, without regard to legal rules. Instead of applying general and abstract rules, he/she must stick to the circumstances of the case”.<sup>10</sup>

40. This is confirmed by Article 15.1 of the FAT Rules *in fine* according to which the arbitrator applies “general considerations of justice and fairness without reference to any particular national or international law”.

41. In light of the foregoing developments, the Arbitrator makes the following findings:

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<sup>7</sup> That is the Swiss statute that governed international and domestic arbitration before the enactment of the PILA. Today, the Concordat governs exclusively domestic arbitration.

<sup>8</sup> P.A. KARRER, *Basler Kommentar*, No. 289 *ad* Art. 187 PILA.

<sup>9</sup> *JdT* 1981 III, p. 93 (free translation).

<sup>10</sup> POUURET/BESSON, *Comparative Law of International Arbitration*, London 2007, No. 717, pp. 625-626.



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### **6.2. Findings**

#### **6.2.1 Agent Fee in connection with the player Svetlana Makhlina**

42. It has not been disputed by Respondent and is also publicly known that Ms Makhlina has joined its women's team in 2008. In its letter to Claimant dated 12 May 2009 Respondent merely indicated that Claimant did not perform any services which led to the signing of the contract with Ms Makhlina. Since Claimant allegedly did not *“participate in conclusion of the contract with player Makhlina”*, Respondent refused to pay the Agent Fee.
43. The Parties have not produced a player contract between Respondent and Ms Makhlina. However, there can be no doubt that an agreement exists between Respondent and Ms Makhlina which governs her activities in Respondent's team.
44. According to Addendum No. 3 to the Standard Agency Contract, Respondent agreed to pay to Claimant RUB 370,000 *“for the services rendered in connection with Svetlana Makhlina.”* The services to be performed by the agent are defined in Clause 2 of the Standard Agency Contract:

#### ***“2 CONTRACT NEGOTIATION SERVICES***

*The Agent shall advise, assist and represent the Club in connection with the engagement of basketball players by the Club and will subsequently liaise and deal in the Club's interest with the players on all matters of interest for the Club in connection with his engagement with the players. The Club will in no way hold the representative responsible or liable for any circumstances relating to such contract, including non-performance on the part of the player of any or all terms.”*

45. Although Clause 2 of the Standard Agency Contract imposes a duty upon the agent to perform certain services, his compensation is linked to the successful conclusion of an



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agreement between the club and a particular player. Accordingly, Clause 3 of the Standard Agency Contract provides that the Agent Fee relates to the player's salary. On the other hand, the agent cannot claim any compensation under the Standard Agency Contract if his services, as extensive they may have been, did not lead to the engagement of that player.

46. There is no direct evidence on the participation of Claimant in the negotiations between Respondent and Ms Makhlina. However, the facts that (i) Addendum No. 3 clearly associates Claimant with Ms Makhlina, and (ii) Ms Makhlina played with Respondent's team during the 2008/2009 season, are strong indications that Claimant fulfilled his contractual duties and assisted in the negotiations between Respondent and Ms Makhlina which eventually led to her engagement. The wording of Clause 2 of Addendum No. 3 supports this finding: in this clause, Respondent undertook to pay RUB 370,000 without any conditions or reservations "for the services *rendered* in connection with Svetlana Makhlina" (emphasis added) which indicates that at the time of signing of Addendum No. 3 (28 May 2008), Claimant had already provided his services.
47. Thus, the Arbitrator finds that there is sufficient evidence before him to conclude that Claimant is entitled to the Agent Fee for his services rendered in connection with Svetlana Makhlina in the amount of RUB 370,000. It bears emphasizing that the Arbitrator's conclusions rest on the record as it stands and not on the mere fact that Respondent has defaulted. Under these circumstances, the Arbitrator does not deem it necessary to call for further evidence.

### 6.2.2 Agent Fee in connection with the players Natalia Zhedik and Ekaterina Burko

48. On 6 April 2009 Respondent paid the Agent Fees for the services rendered in



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connection with Natalia Zhedik and Ekaterina Burko. Claimant has amended his request for Relief accordingly, and no further decision on this issue is required from the Arbitrator.

### 6.2.3 Penalties

49. In addition to the Agent Fee due in connection with Svetlana Makhlina, Claimant claims payment of “service charges” on the Agent Fees for all three players in a total amount of RUB 1,914,000 plus RUB 6,000 (RUB 3,000 per installment due) per day since 1 April 2009.
50. Clause 3 of each one of the three Addenda to the Standard Agency Contract provides the following:

#### **“3) LATE PAYMENT**

*In the event any payment described above is more than five (5) days late, the Club agrees to pay to the TP SPORS a service charge of 3,000 Roubles per day.”*

51. In its letter to Claimant dated 12 May 2009, Respondent indicated that it would be ready to discuss the “*opportunity of paying fine sanctions*” but there is no evidence that such discussions actually took place or that any “service charges” were paid by Respondent.
52. The so-called “service charge” is a contractual penalty, i.e. a flat fee for each day of late payment which is cumulatively calculated without limitation as long as the Agent Fee has not been paid.
53. In most jurisdictions, contractual penalties are subject to judicial review and can be



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adjusted if they are excessive. Whether a contractual penalty is excessive is usually left to the discretion of the judge and depends on the individual circumstances. As a general rule, a contractual penalty is considered to be excessive if it is disproportionate to the basic obligation of the debtor.

54. Although the Arbitrator understands the purpose of the contractual penalty, namely to discourage Respondent from withholding any payments due, he finds that the provision at issue leads to excessive penalties, which is demonstrated by the following circumstances:
- a. The amount of the penalty is not capped. In fact, the penalty claimed by Claimant exceeded the basic Agent Fee already after a few months and now results in a claim for an amount which is several times a multiple of the Agent Fee. The Agent Fee in question amounts to RUB 370,000, payable in two installments of RUB 185,000 each. Claimant requests a penalty on the first installment of RUB 3,000 per day from the 6<sup>th</sup> day after the date when the installment became due until the date of the award, and another penalty of RUB 3,000 per day from the 6<sup>th</sup> day after the date when the second installment became due until the date of the award. Accordingly, the total penalties due would be in excess of RUB 1,500,000 (i.e. more than four times the amount of the Agent Fee).
  - b. The amount of the contractual penalty does not depend on the amount of the unpaid Agent Fee. It amounts to RUB 3,000 per day irrespectively of whether the due amount is RUB 185,000 or RUB 370,000.
  - c. The penalty applies also to the default of *partial* payments. In the case of S. Makhlina, Claimant claims a penalty of RUB 3,000 on each installment, resulting in a total penalty of RUB 6,000 per day after the second installment became due.



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55. When determining the appropriate amount for the contractual penalty, the Arbitrator may take the following considerations into account:
- a. The Arbitrator accepts that a contractual penalty shall constitute a credible deterrent against deliberate withholding of due payments.
  - b. A contractual penalty in the form of a flat fee, applying equally to small or large sums, may be problematic and may call for adjustment depending on the circumstances.
  - c. The contractual penalty should be capped. Only under exceptional circumstances (e.g. if the period of default clearly exceeds one year or if the behavior of the debtor calls for a higher sanction), such cap shall exceed the compensation whose payment is secured by the contractual penalty.
  - d. The Arbitrator should also take the behavior of the parties into account: the duty to mitigate one's own damage requires that contractual penalties should be reduced if the creditor deliberately delays the enforcement proceedings.<sup>11</sup>
56. Applying the above principles and deciding *ex aequo et bono*, the Arbitrator adjusts the contractual penalties to RUB 3,000 per day on the full initial payments due and applies a cap in the amount of the Agent Fee in each of the three cases. The penalty shall commence on the 6<sup>th</sup> day after the initial payment became due. Thus, the corresponding "service charges" amount to RUB 820,000 (i.e. Ms Zhedik: RUB 250,000; Ms Burko: RUB 200,000; Ms Makhlina: RUB 370,000).

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<sup>11</sup> See 008/08 FAT, Djoric vs. PBC Lukoil Academic Sofia Basketball Club.



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### 7. Costs

57. On 19 June 2009, considering that pursuant to Article 19.2 of the FAT Rules “the FAT President shall determine the final amount of the costs of the arbitration which shall include the administrative and other costs of FAT and the fees and costs of the FAT President and the Arbitrator”, and that “the fees of the Arbitrator shall be calculated on the basis of time spent at a rate to be determined by the FAT President from time to time”, taking into account all the circumstances of the case, including the time spent by the Arbitrator, the complexity of the case and the procedural questions raised, the FAT President determined the arbitration costs in the present matter at EUR 6,800.00. In the present case, the costs shall be borne by 80% by Respondent and 20% by Claimant. Claimant fully succeeded on the issue of the Agent Fees but must accept a reduction of the penalties for late payments.
58. Given that Claimant has paid the totality of the Advance on the arbitration costs of EUR 8,000.00, as fixed by the Arbitrator, the Arbitrator decides that:
- (i) the FAT shall reimburse EUR 1,200.00 to Claimant;
  - (ii) Respondent shall pay to Claimant 80% of the difference between the costs advanced by him and the amount which is going to be reimbursed to him by the FAT, i.e. EUR 5,440.00.
59. Furthermore, the Arbitrator considers it adequate that Claimant is entitled to the payment of a contribution towards his reasonable legal fees and other expenses (Article 19.3 of the FAT Rules). Since in the case at hand the payment by Claimant of the non-reimbursable handling fee was not taken into account when allocating the costs of the arbitration, the Arbitrator considers it adequate to take into account the



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non-reimbursable fee when assessing the expenses incurred by Claimant in connection with these proceedings. After having reviewed and assessed the submissions by Claimant, the Arbitrator fixes the contribution towards the legal fees and expenses of Claimant at RUB 160,000.00.



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### **8. AWARD**

For the reasons set forth above, the Arbitrator decides as follows:

- 1. WBC “Spartak” St. Petersburg is ordered to pay to Mr. Tigran Petrosean, TP Sports RUB 370,000.00 for agent fees.**
- 2. WBC “Spartak” St. Petersburg is ordered to pay to Tigran Petrosean, TP Sports RUB 820,000.00 for late payment penalties.**
- 3. WBC “Spartak” St. Petersburg is ordered to pay to Tigran Petrosean, TP Sports EUR 5,440.00 as a reimbursement of the Advance on Costs of the arbitration.**
- 4. WBC “Spartak” St. Petersburg is ordered to pay to Tigran Petrosean, TP Sports RUB 160,000.00 as a contribution to Tigran Petrosean’s legal fees and expenses.**
- 5. Any other or further-reaching claims for relief are dismissed.**

Geneva, 3 July 2009

Stephan Netzle  
(Arbitrator)



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### Notice about Appeals Procedure

cf. Article 17 of the FAT Rules  
which reads as follows:

#### **"17. Appeal**

Awards of the FAT can only be appealed to the Court of Arbitration for Sport (CAS), Lausanne, Switzerland and any such appeal must be lodged with CAS within 21 days from the communication of the award. The CAS shall decide the appeal *ex aequo et bono* and in accordance with the Code of Sports-related Arbitration, in particular the Special Provisions Applicable to the Appeal Arbitration Procedure."